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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/815,856	03/23/2001	John Zimmerman	US 010094	5812

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EXAMINER

TRAN, HAI V

ART UNIT	PAPER NUMBER
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2623

DATE MAILED: 11/20/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/815,856

Applicant(s)

ZIMMERMAN, JOHN

Examiner

Hai Tran

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 August 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) 3, 10, 19 and 20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-2, 4-9, 11-18, 21-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

Applicant's arguments filed 08/25/2006 have been fully considered but they are not persuasive.

Applicant argues, "even if the teaching of Herz and Mowry, were combined, the combined device would not include all the elements claimed, as the combined device would fail to report the recommendations to the user through the celebrity upon whom the recommendation were based."

In response, the Examiner respectfully disagrees with Applicant because as self-admitted by Applicant that Mowry clearly uses a celebrity to provide endorsement of products through "LIVE SHOW" per discretion of the producer, as such, the system able to introduce a "special guest", i.e., celebrity, to promote a product based on the demographic data (§0057, for example "LIVE SHOW Player profile; Flow A §0098, Flow B §0100 and Flow E §0106 of Fig. 2 and § 0107, § 0173 page 12). In view of that, Mowry clearly discloses the elements recited, i.e., "reporting the recommendation to the user through the celebrity."

Applicant further argues, "The Office action has failed to show where in the Herz reference it would be more desirable to have a celebrity verbally present the information regarding the desired television programs."

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by

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combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Herz teaches the use of user profile to assist user to select the "best" product based on "celebrity profile" (see Col. 49, lines 1-6). On the other hand, Mowry teaches the use of a celebrity to endorse a product to certain category of users. In view of that the combination of Herz with the teaching of Mowry would yield to an effective system that effectively promotes goods and services to targeted viewers by taking the advantage of a celebrity attractiveness, celebrity-source likeability, as an endorser.

In view of that the Examiner maintains the rejection.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 1-2, 4-9, 11-18, and 21-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Herz et al. (US 5758257) in view of Mowry (US 2001/0049625).

Claim 1, Herz discloses a method for making a recommendation in a lifestyle recommendation machine , the method comprising the steps of:

Providing a celebrity profile of a celebrity to a user (Col. 49, lines 1-6);

Making a recommendation to the user for an item service, and /or event based on the celebrity profile (Col. 47, lines 20-Col. 49, lines 5);

Herz does not clearly discloses "reporting to the user through the celebrity while simultaneously displaying an image of the celebrity."

Mowry discloses recommendation to the user for an item service, and /or event based on the celebrity endorsement, and reporting to the user through the celebrity while simultaneously displaying an image of the celebrity" (§0057, for example "LIVE SHOW Player profile; Flow A §0098, Flow B §0100 and Flow E §0106 of Fig. 2 and § 0107, page 7, §0101-0102; page 8, §0120-0124 and page 12, §0173). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify Herz of using celebrity appearances during the show for endorsing a product, as taught by Mowry, by taking the advantage of a celebrity attractiveness, celebrity-source likeability, as an endorser, so to effectively promote goods and services to targeted viewers.

Claim 2, the claimed recommendation being a recommendation of television programming is met by the discussion of a program being defined as a television program (Herz, Col. 4-6, Summary).

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Claim 4, Mowry further discloses "wherein the image is a video of the celebrity and the reporting step comprises playing accompanying audio which announces the recommendation" (page 7, §0101-0102; page 8, §0120-0124 and page 12, §0173).

Claim 5, Herz in view of Mowry teaches all of that which is discussed above with regards to claim 1. Herz does suggest the use of a celebrity profile. Mowry reference teaches discloses live show host/celebrity appearances for product endorsement, which could conceivably include still images of hosts/celebrity (page 7, §0101-0102; page 8, §0120-0124 and page 12, §0173).

Neither the Herz nor Mowry references teach that the "image is a still image of the celebrity."

Therefore, It would have been obvious to one of ordinary skill in the art at the time of the invention to include still images of .hosts/celebrity for endorsing a product, in order to correlate between the endorsed product and the associated celebrity image for targeting commercials to users.

Claim 6, Herz in view of Mowry teaches all of that which is discussed above with regards to claim 5.

Herz does suggest the use of a celebrity profile. Mowry reference teaches discloses live show host/celebrity appearances for product endorsement, which

could conceivably include still images of hosts (page 7, §0101-0102; page 8, §0120-0124 and page 12, §0173).

Neither Herz nor Mowry references teach that the "reporting step further comprises displaying a textual message which announces the recommendation."

Therefore, It would have been obvious to one of ordinary skill in the art at the time of the invention to include textual message along with hosts/celebrity for endorsing a product, in order to correlate between the endorsed product and the associated celebrity image for targeting commercials to users.

Regarding claim 7, Herz in view of Mowry references teach all of that which is discussed above with regards to claim 5. Mowry reference further teaches the "reporting step further comprises playing accompanying audio which announces the recommendation, live show with celebrity participation (page 7, §0101-0102; page 8, §0120-0124 and page 12, §0173).

Claim 8, apparatus claim is analyzed with respect to method claim1.

Claim 9, Herz (Fig. 5, el. 508)in view of Mowry (Fig. 5 , el. 190) further disclose wherein the lifestyle recommendation device is a television programming storage device.

Claim 11 is analyzed with respect to method claim 4.

Claim 12 is analyzed with respect to method claim 5.

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Claim 13 is analyzed with respect to method claim 6.

Claim 14 is analyzed with respect to method claim 7.

Claim 15, a program storage device readable by machine, tangibly embodying a program of instructions executable by the machine to perform method step for making a recommendation in a lifestyle recommendation machine is analyzed with respect to method claim 1.

Claim 16, a computer product embodied in a computer readable medium for making a recommendation in a lifestyle recommendation machine is analyzed with respect to method claim 1.

Claim 17, Herz discloses a method for making a recommendation in a lifestyle recommendation machine , the method comprising the steps of:

Substituting a user profile based on explicit and/or implicit directions of a user with a celebrity profile of a celebrity to a user (Col. 49, lines 1-6);

Making a recommendation to the user for an item service, and /or event based on the celebrity profile (Col. 47, lines 20-Col. 49, lines 5);

Herz does not clearly discloses "reporting to the recommendation to the user through the celebrity while simultaneously displaying an image of the celebrity."

Mowry discloses "Making a recommendation to the user for an item service, and /or event based on the celebrity profile, and reporting to the user through the

celebrity while simultaneously displaying an image of the celebrity" (page 7, §0101-0102; page 8, §0120-0124 and page 12, §0173). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify Herz of using celebrity appearances during the show for endorsing a product, as taught by Mowry, so to effectively promote goods and services to targeted viewers.

Claim 18, Herz in view of Mowry teaches all of that which is discussed above with regards to claim 17. Herz further discloses that a celebrity profile can be downloaded from an external source and used to suggest programming (col. 48, lines 55 - col. 49, lines 6). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to substitute the user profile with that of a celebrity profile downloaded from an external source, in order to appeal to people's interest in celebrity programming choices.

Claim 21 is analyzed with respect to method claim 4.

Claim 22 is analyzed with respect to method claim 5.

Claim 23 is analyzed with respect to method claim 6.

Claim 24 is analyzed with respect to method claim 7.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hai Tran whose telephone number is (571) 272-7305. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher S. Kelley can be reached on (571) 272-7331. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

HT:ht
11/09/2006


HAI TRAN
PRIMARY EXAMINER